

DEC 15 2005

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVINO TORIBIO MAGALLANES; et
al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70554

Agency Nos. A95-301-282
A95-301-283
A95-301-284

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, TASHIMA and FISHER, Circuit Judges.

Silvino Toribio Magallanes, his wife Alicia Rodriguez, and their son, Jorge
Toribio Rodriguez, natives and citizens of Mexico, petition pro se for review of

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

the Board of Immigration Appeals’ (“BIA”) order summarily affirming an immigration judge’s (“IJ”) order denying their application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review constitutional claims de novo, *see Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001), and we deny the petition for review.

Petitioners contend that they were denied equal protection because they were not allowed to apply for suspension of deportation. That argument is without merit. Congress comported with equal protection when it repealed suspension of deportation for aliens, such as the petitioners, who were placed in removal proceedings on or after April 1, 1997, while permitting aliens placed in deportation before that date to maintain their applications for suspension of deportation. *See Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1108 (9th Cir. 2003); *Hernandez-Mezquita v. Ashcroft*, 293 F.3d 1161, 1163-65 (9th Cir. 2002).

PETITION FOR REVIEW DENIED.